



HOWARD COUNTY DEPARTMENT OF PLANNING AND ZONING

3430 Courthouse Drive

■ Ellicott City, Maryland 21043 ■

410-313-2350

Voice/Relay

Valdis Lazdins, Director

FAX 410-313-3467

HOWARD COUNTY AGRICULTURAL PRESERVATION ADVISORY BOARD May 22, 2017

Staff Report

Owners: Donald Fleming Revocable Convertible Trust and Shirley Fleming Revocable Convertible Trust
c/o Shirley Fleming, Trustee
611 W. Watersville Road
Mount Airy, MD 21771

Farm Location: South side of W. Watersville Road, just south of the Carroll County line
Tax Map 2, Parcel 10; 176 +/- acres

Easement Designation: MALPF Easement 13-82-06-e

Request: Agricultural subdivision of 50 +/- acres

Recommendation: Recommendation to the Agricultural Preservation Advisory Board to recommend approval to MALPF of the request to agriculturally subdivide 50 +/- acres from the 176-acre farm.

Summary:

The Fleming Revocable Trusts are the current owners of the subject property, which was placed in the Maryland Agricultural Land Preservation Foundation (MALPF) program on May 20, 1985 by Donald and Shirley Fleming. The current request is to divide 50 +/- acres from the 176 +/- acre farm to create a separate parcel to be transferred to the Gentle Giants Draft Horse Rescue property to the south, to provide them with additional acreage to pasture their horses.

Background

The proposal outlined by the Fleming family calls for 50 +/- acres of pastureland, hayfield, and woodland to be subdivided from their farm, and to be transferred to the Gentle Giants Draft Horse Rescue (GGDHR) property to the south. The GGDHR rescues draft and draft cross horses from slaughter, abuse, and neglect. This proposal would allow the rescue to accommodate the increasing number of animals in need of their care, and would not affect the current Fleming operation of crops for sale and grasslands for hay production. GGDHR is comprised of two perpetual Howard County environmental preservation parcels that border the Fleming farm to the south and southeast.

The proposed agricultural subdivision parcel is located on the south side of the Fleming property affronting the property boundary shared with GGDHR. Under this proposal, the subdivision line runs east and north alongside the Fleming driveway as it traverses the farm, and then continues east, following existing hedgerows, to the edge of a hayfield. To achieve the minimum size of 50-acres, the proposed subdivision line then crosses the hayfield to reach the eastern property boundary. There are no dwellings or structures on the proposed 50 +/- acre parcel to be transferred to GGDHR. There will also be no public vehicular access to GGDHR from the Fleming driveway.

After subdivision, the Fleming farm will contain approximately 126 +/- acres, which will continue to be owned and operated by the family.

Staff Analysis:

The soils capability analysis found that both parcels under this proposal sufficiently meet MALPF soil requirements of a composition of at least 50% USDA soil capability classes I, II, & III. The proposed southern subdivided parcel (50 +/- acres) to be transferred to GGDHR has a soils composition of 68.5% classes I, II, & III. The new configuration of the northern subdivided parcel (126 +/- acres) that will continue to be owned by the Fleming family has a soils composition of 55.8% classes I, II, & III.

Staff Recommendation:

Staff recommends that the APAB recommends approval to the MALPF Board.

Prepared by:


Joy Levy, Administrator
Agricultural Land Preservation Program

Date:

5/15/17

Attachments:

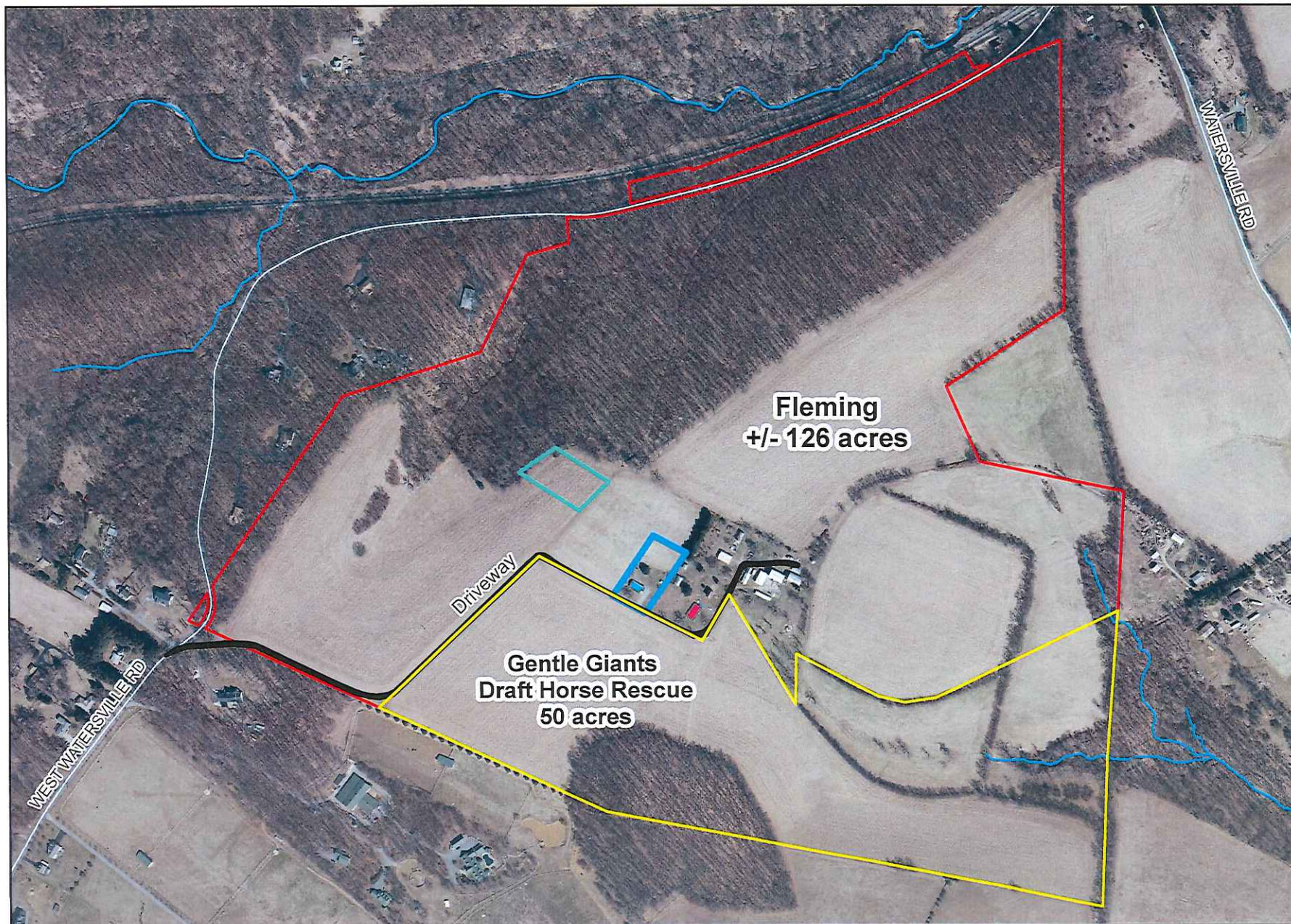
Preservation Map

Aerial Photo

Soils Map

MALPF Application for Agricultural Subdivision, signed by Shirley Fleming

Soils analysis for both parcels, as required by MALPF



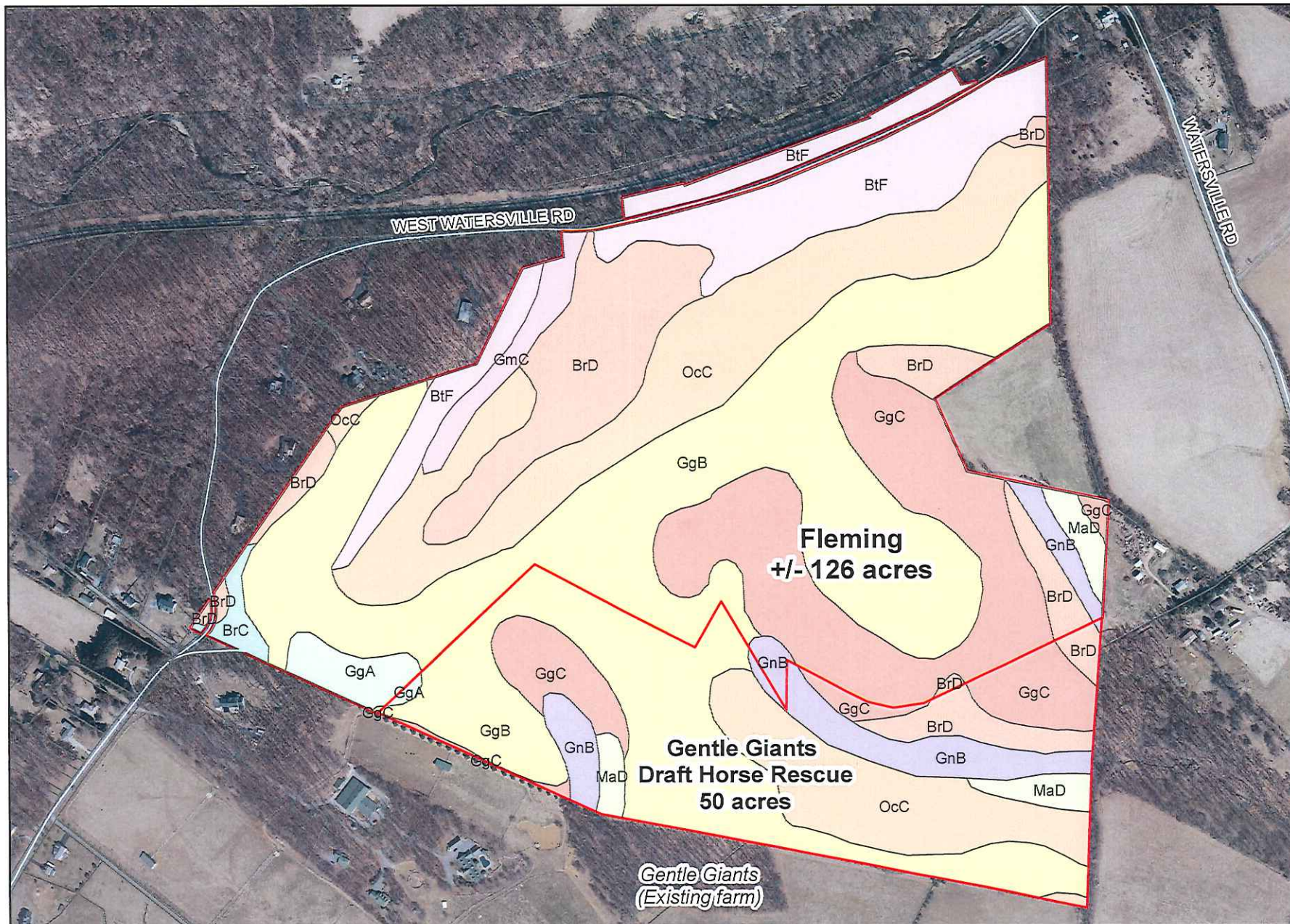
Fleming (MALPF #13-82-06e) TM 2, P 10

Aerial

By: Mitch Ford
Resource Conservation Division
Howard County, Maryland
Print Date: 05/15/2017

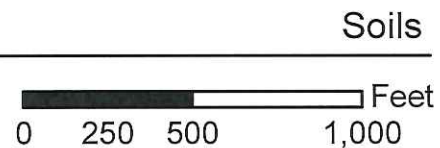
- | | | |
|--------------|---------------------------------|-----------------------|
| GentleGiants | Shirley Fleming 1.0 AC Lot | Shirley Fleming House |
| Fleming | Brenda Fleming 1.0 AC Child Lot | Stephen Fleming House |
| Driveway | | |

0 250 500 1,000 Feet

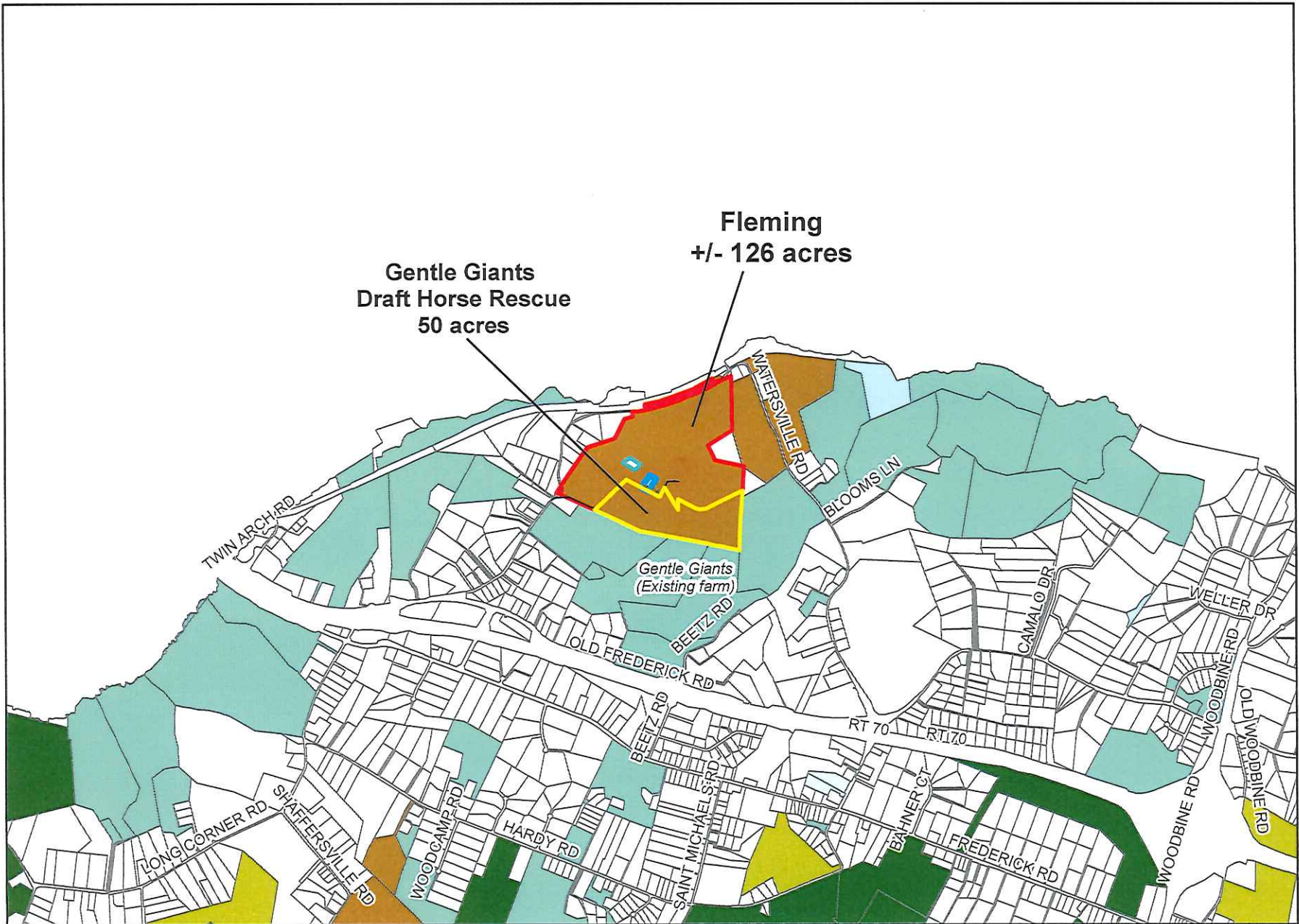


Fleming (MALPF #13-82-06e) TM 2, P 10

- Gentle Giants
- Fleming




By: Mitch Ford
 Resource Conservation Division
 Howard County, Maryland
 Print Date: 05/04/2017



Fleming (MALPF #13-82-06e) TM 2, P 10

Land Preservation

 Gentle Giants
 Fleming

 Feet
0 1,250 2,500 5,000

By: Mitch Ford
Resource Conservation Division
Howard County, Maryland
Print Date: 05/04/2017

State of Maryland
Department of Agriculture



The Wayne A. Cawley, Jr., Building
50 Harry S. Truman Parkway
Annapolis, MD 21401
410-841-5860 FAX 410-841-5730

MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION
APPLICATION FOR AGRICULTURAL SUBDIVISION
(COMAR 15.15.12.)

A. NAMES OF ALL OWNERS IN TITLE:

DONALD E FLEMING + SHIRLEY L FLEMING

CONTACT ADDRESS: 6111 WEST WATERSVILLE RD MOUNT AIRY MD 21771

FILE NO.: 13-82-06C COUNTY: HOWARD ACRES: 175.4108

TAX MAP 2 PARCEL NO. 0010 TAX MAP _____ PARCEL NO. _____

TAX MAP _____ PARCEL NO. _____ TAX MAP _____ PARCEL NO. _____

PLEASE ANSWER THE FOLLOWING QUESTIONS REGARDING PREVIOUS APPROVAL(S) FOR AGRICULTURAL SUBDIVISION INVOLVING THIS LAND:

Has the Foundation approved any prior agricultural subdivisions involving this land? Yes ☐ No ☒

If yes, please indicate date of approval: _____

If the land was previously agriculturally subdivided without Foundation approval, are you seeking retroactive approval: Yes ☐ No ☒

Please complete the following if the land was previously subdivided:

What are the sizes of the resulting divided parcels?

Parcel #1 _____ acres, Parcel #2 _____ acres, Parcel #3 _____ acres, Parcel #4 _____ acres

Who presently owns the resulting divided parcels?

Parcel #1 Name _____ Deed reference: _____

Parcel #2 Name _____ Deed reference: _____

Parcel #3 Name _____ Deed reference: _____

Parcel #4 Name _____ Deed reference: _____

B. PLEASE ANSWER THE FOLLOWING QUESTIONS REGARDING THIS APPLICATION FOR APPROVAL OF AN AGRICULTURAL SUBDIVISION

1. What are the proposed sizes of the resulting divided parcels?

Parcel #1 125 acres, Parcel #2 50 acres, Parcel #3 _____ acres, Parcel #4 _____ acres

2. Do the boundaries for agricultural subdivision follow some physical characteristics of the farm, such as the end of a field or hedge row, a stream, or some other physical feature of the farm? Yes ☐ No ☒ If yes, explain: FARM PROPERTY LINE AND HEDGE ROW DEPENDING ON ACREAGE, EITHER STREAM BED OR HEDGE ROW.

3. If one of the divided parcels is less than 50 acres, please describe either the physical separation of the land created by (a) bodies of water; (b) public roads; or (c) features that significantly restrict the movement of agricultural equipment from one portion of the land to another, and/or whether the parcel is to be conveyed to owners of adjacent land which is already encumbered by a MALPF

Easement or another type of conservation easement:

N/A

4. Please state the agricultural purpose of the requested subdivision. You should provide as much detail as possible to explain the agricultural purpose of your proposed subdivision. Estate Planning or estate distribution are not agricultural purposes.

CREATE PASTURE GROUND FOR ADJACENT FARM FOR HORSES. THIS WILL GIVE THEM MORE SPACE FOR THE AMOUNT OF HORSES THEY CURRENTLY HAVE. IT WILL ALSO ALLOW FOR EXPANSION FOR FUTURE HORSES RESCUE AND REHABILITATION. SEE ADDITIONAL AT QC.

5. How many acres in each resulting divided parcel are classified as USDA Soil Capability Class I, II, III and/or Woodland Group 1 or 2? Parcel #1 10.13 acres, Parcel #2 34.25 acres, Parcel #3 _____ acres, Parcel #4 _____ acres

5.a. If you stated under #3 that a parcel is to be conveyed to owners of adjacent land which is already encumbered by a MALPF Easement, state how many acres out of the total acreage of newly configured land are classified as USDA Soil Capability Class I, II, III and/or Woodland Group 1 or 2: _____

6. Will any of the resulting divided parcels be added to another parcel to enhance an adjacent agricultural operation? Yes ☐ No ☒ If yes, please explain which parcel(s) and how it/they will enhance the adjacent agricultural operation, and state whether the adjacent parcel is encumbered by a MALPF Easement or another type of conservation easement:

50 ACRES TO BE SUBDIVIDED FROM PARCEL #1 WILL BECOME SEPARATE PARCEL OF RECORD HOWEVER, OPERATIONALLY, IT WILL BECOME PART OF THE GENTLE GIANTS HORSE RESCUE FARM

7. How many existing dwellings (excluding tenant houses) are on the land? 2 How many tenant houses are on the land? 0 Describe where each dwelling or tenant house will be located after the agricultural subdivision (a tax map or boundary survey must be attached depicting the current location(s) of all building(s) as specified under 9 b.iii. below): N/A

7a. Will you agree to make any of the existing dwellings or dwelling rights non-subdividable from either/both of the proposed subdivided portions of the easement? If yes, please indicate on the attached aerial map which dwelling(s) will be non-subdividable from the easement property. NEGOTIABLE - at this time Gentle Giants leaning towards not having dwelling in the parcels. The Fleming family is flexible.

8. Will the county require any road frontage dedication as a prerequisite for subdivision approval? Yes ☐ No ☒ If yes, please explain: _____

9. Please attach the following to this application:

- a. An unmarked copy of a tax map or boundary survey which outlines the entire easement land, including any land previously subdivided, whether approved or unapproved.
- b. A second copy of the tax map or boundary survey which clearly shows:
 - i. the boundaries of the easement land;
 - ii. the location of the proposed line or lines of subdivision and the amount of acreage each resulting divided parcel is proposed to contain;
 - iii. the location of, and access to, all existing dwellings, lot exclusions, tenant houses and farm buildings; and
 - iv. which dwelling(s) will be designated as non-subdividable from the easement property.
- c. A written statement from the landowner indicating:
 - i. the reason for the agricultural subdivision request, including an explanation of how the agricultural subdivision serves the agricultural purpose, how the subdivision will enhance or have no effect upon the agricultural operations, and how the resulting divided parcels will be able to sustain long-term agricultural production, independent from each other;
 - ii. if any rights to a lot or lots have been reserved, but still unexercised, under the easement, a proposal detailing which resulting divided parcel or parcels are to be allocated those rights, provided that family lots that will continue to be reserved and unexercised after the subdivision must be allocated to the resulting divided parcel to be retained by the original grantor of the easement;
 - iii. the name, address, email address and telephone number of all landowners whose lands are involved in this request; and
 - iv. the name of the individual or entity who will pay for the costs of the required corrective easement transaction(s).
- d. A written statement from the county program administrator describing the current overall farm operation, whether the proposed agricultural subdivision serves an agricultural purpose, whether it will enhance or will have no effect upon the agricultural operations, and whether the resulting divided parcels will be able to sustain long-term agricultural production, independent from each other.
- e. A letter of recommendation from the local agricultural land preservation advisory board addressing the potential for continued agricultural use of each of the resulting divided parcels.

8. If the Foundation Board approves an agricultural subdivision, the approval shall be void if:

(a) the landowner fails to provide the required funds and documents to the Foundation within three years of the Foundation Board's approval, unless an extension request has been submitted and approved by Foundation staff within three years of the approval; or

(b) any portion of the easement property which is the subject of the requested agricultural subdivision described herein is sold, transferred or otherwise conveyed in any manner to any party before the corrective easement process is complete

In signing this application, the landowner(s) represent and warrant that the contents of this application and attachments are true and correct to the best of his/her/their knowledge, information and belief.

Shirley Fleming
Landowner Signature/Date

DONALD E. FLEMING (DECEASED)
Landowner Signature/Date

Rev. 10/2014

- f. Written verification from the local tax assessment office that each of the resulting divided parcels continue to qualify for agricultural use assessment under Tax-Property Article, Annotated Code of Maryland.
- g. A letter from local planning and zoning office or the county program administrator that the requested subdivision is consistent with county planning and zoning regulations.
- h. If applicable, letters of support from organizations such as the Soil Conservation Service and Forest Service attesting to the long-term productive capabilities for each resulting divided parcel of less than 50 acres.
- i. If the landowner is seeking retroactive approval for an previously unapproved subdivision, such additional evidence that establishes that the subdivision served an agricultural purpose, that the subdivision enhanced or had no effect upon the agricultural operations being conducted upon the land, that the resulting divided parcels have sustained agricultural production independently of each other from the time of the subdivision, and the resulting divided parcels have sufficient potential to sustain agricultural production independent of each other in the future.
- j. Such other information concerning the landowner's situation and plans to provide the Foundation with a complete analysis of the proposed subdivision.

In signing this application, the landowner(s) acknowledge(s):

1. No easement land may be subdivided without the written approval of the Foundation. The Foundation may give written approval to a landowner's request for an agricultural subdivision of the land and separate ownership of the resulting divided parcels for reasons the Foundation considers sufficiently extraordinary to justify an exception to the prohibition against subdivision. The approval for an agricultural subdivision is not an absolute right of a landowner, and requests shall be reviewed by the Foundation on a case-by-case basis to determine if, in the Foundation's opinion:

- (a) The proposed agricultural subdivision serves an agricultural purpose;
- (b) The proposed agricultural subdivision will enhance or have no effect upon the agricultural operations being conducted upon the land; and
- (c) The resulting divided parcels from the agricultural subdivision are able to sustain long-term agricultural production, independent from each other.

2. Corrective easements are required to formalize the Foundation's approval. The corrective easements may include other additional terms, conditions, waivers, or restrictions that the Foundation considers appropriate to protect the agricultural purpose and the future profitability of resulting divided farm parcels. The landowner shall pay for the cost of all title work, title insurance premiums, surveys and documentation necessary to complete the agricultural subdivision. These transactions are not considered a priority of the Foundation and shall be completed as staff resources permit.

3. The owners of all of the resulting divided parcels of an approved agricultural subdivision under this Chapter shall waive the right to request termination under Agriculture Article §2-514 Annotated Code of Maryland and shall agree to specify the waiver in the corrective easements.

4. The Foundation may deny a request for an agricultural subdivision if an easement violation exists upon the land.

5. If a subdivision was previously unapproved, the Foundation may either require that the land be restored to its original configuration or it may consider accepting a subdivision request from the owners of all of the resulting divided parcels. If it accepts a subdivision request, but does not ultimately approve the agricultural subdivision, the land shall be restored to its original configuration under the easement.

6. A landowner shall not proceed with plans pursuant to the approval (including, but not limited to, plat recordation or deed conveyance) until the corrective easements have been recorded among the land records in the county in which the land is situated, unless the Foundation issues a letter permitting the landowner to proceed.

7. If the Foundation approves the request, then the landowner:

(a) shall submit to the Foundation, 10 copies of a survey plat, signed and sealed by a surveyor registered in the State of Maryland depicting the resulting divided parcels of the land, along with separate written metes and bounds descriptions of those resulting divided parcels; and

(b) shall remit funds in the amount and manner directed by the Foundation to cover the costs of the transaction and shall furnish such other documentation as directed by the Foundation.

Levy, Joy

To: Stephen Fleming
Subject: RE: FW: Request

Importance: High

-----Original Message-----

From: Stephen Fleming [mailto:fleming.steve@verizon.net]
Sent: Thursday, May 11, 2017 11:47 PM
To: Levy, Joy <jlevy@howardcountymd.gov>; fleming.steve@verizon.net; fleming2416@yahoo.com; lee.mauerhan.ih1n@statefarm.com
Subject: Re: FW: Request

Joy,

Sorry this took a little bit of time. Been very busy with Farm activities. Below you'll find more explanation to the question 9.c.i.

The Elm Lee Farm owned by Fleming's has been in agricultural operation since the late 1930's, at which time it became a dairy cow operation where cows were milked twice a day. Then in the late 1980's the dairy operation ceased, but the farm continued to grow crops for sale, and grasslands from which hay is baled.

The request is to sell acreage to the Gentle Giants Rescue Horse Farm, to allow for expansion in the rehabilitation of large horses. The acreage will continue to serve the agricultural purpose of keeping it grasslands/pasture ground for the horses. It will have no effect on the rest of the Fleming farm's agricultural operations, which will continue to grow crops for sale and grow grasslands for hay.

The agricultural subdivision will be able to sustain long-term agricultural production as to maintaining grasslands/pasture ground in order to rehabilitate large horses. The Gentle Giants Rescue Horse Farm and the Fleming Elm Lee Farm will be independent of each other with their agricultural operations.

Thanx's

Stephen Fleming

From: Levy, Joy

Sent: Monday, May 08, 2017 4:31 PM

To: Stephen Fleming (fleming.steve@verizon.net) <fleming.steve@verizon.net>

Subject: Request

Donald E Fleming & Shirley L Fleming
File No: 13-82-06c

Question 9c:

- ii. There are no reserved child lots pertaining to the ^{30 acre} parcel.
There are three remaining child lots attributable to the resultant 125 acre Fleming farm.
- iii. Shirley Fleming and Donald Fleming (deceased)
611 West Watersville Rd., Mount Airy Md 21771
Phone: (443) 250-1529
- iv. Undecided at this time.



Howard County

Internal Memorandum

Subject: MALPF Easement #13-82-06
Fleming-Gentle Giants Agricultural Subdivision Soils Analysis

To: Michelle Cable
Administrator, Maryland Agricultural Land Preservation Foundation (MALPF)

Through: Joy Levy, Agricultural Land Preservation Program Administrator
Department of Planning and Zoning

From: Mitch Ford, Planning Technician
Agricultural Land Preservation Program (ALPP)

Date: May 4, 2017

Please see below for soils-land area calculations derived from GIS for the proposed 50-acre subdivision of the Fleming property.

Proposed Subdivided Gentle Giants property:

- +/- 34.25 acres of USDA Class I, II, III
- **68.5%** of the 50-acre parcel is comprised of USDA Class I, II, III (>50%)
- Successfully meets MALPF subdivision requirements

Proposed Subdivided Fleming property*:

- +/- 70.13 acres of USDA Class I, II, III
- **55.8%** of the 125-acre parcel is comprised of USDA Class I, II, III (>50%)
- Successfully meets MALPF subdivision requirements

Result:

The agricultural subdivision set forth meets the required soils composition for both parcels under the proposed property boundary delineation.